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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------------|
| 10/582,905 | 06/13/2006 | Johann Schenkl | Wuesthoff-8 (9A-98 448) | 5005 |
| 26479 | 7590 | 03/04/2009 | | |
| STRAUB & POKOTYLO 788 Shrewsbury Avenue TINTON FALLS, NJ 07724 | | | EXAMINER PHAM, HOA Q | |
| | | | ART UNIT 2886 | PAPER NUMBER |
| | | | MAIL DATE 03/04/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/582,905 | Applicant(s) SCHENKL, JOHANN | |
| | Examiner Hoa Q. Pham | Art Unit 2886 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-13, 15, 18, 21 and 27-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-13, 15, 18, 21 and 27-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/26/09 has been entered.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

3. The drawings filed on 5/30/08 are accepted.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

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Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-13, 15, 18, 21, 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schenkl et al (6,771,373) in view of Lloyd et al (5,493,127) or Tambo et al (5,194,921).

Regarding claims 11-13, Schenkl et al (of record) discloses a sensor for transmission measurement in a washing machine or dishwasher with a carrier (26), a transmitter (12) attached to the carrier to emit a transmitter beam, a receiver (14) attached to the carrier to receive the beam generated by the transmitter (figures 1-2). The carrier comprises a first leg (8) to which the transmitter (12) is attached and a second leg (10) to which the receiver (14) is attached opposite the transmitter. Schenkl does not explicitly teach a diaphragm system arranged on the carrier spaced from the transmitter or arranged on the carrier spaced from receiver. However, such a feature is known in the art as taught by Lloyd et al or Tambo et al. Both Lloyd et al and Tambo et al, from the same field of endeavor, discloses a fluid measuring device in which the diaphragm (i.e., apertures 58 and 60 in figure 6 of Lloyd et al or slits 5 and 9 in figure 1 of Tambo et al) are arranged spaced from the transmitter and receiver. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in Schenkl a diaphragm system spaced from the transmitter and spaced from the receiver as taught by Lloyd et al or Tambo et al. The rationale for this modification would have arisen from the fact that using such diaphragm system would prevent unwanted light that may enter the detector system.

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Regarding claims 15, 18, and 21; figure 2 of Schenkl et al shows that leg (10) is longer than leg (8) and a temperature sensor (18) arranged on the long leg.

Regarding claims 27-28, it is noted that when the diaphragms located in front of the transmitter and the receiver, the distance between the diaphragm opening at the transmitter and the diaphragm opening at the receiver is greater than the space between the transmitter (or receiver) and the diaphragm opening (see figure 2 of Schenkl et al).

Regarding claims 29-31, it is inherent that when the diaphragm is used in front of the light source (i.e., LED) or receiver, the diaphragm would limit some areas of the main lobe.

Regarding claim 32, see figure 6 of Lloyd et al or figure 1 of Tambo et al.

Regarding claim 33, since Schenkl et al teaches that the distance between the window 34 and 36 are greater than the distance a) between the window 34 and light source (12) or b) between the window 36 and the detector (14). Thus, it is inherent that when the references combined, the distance between the first diaphragm and second diaphragm is greater than the distance between the first diaphragm and the light source or the distance between the second diaphragm and the detector.

Regarding claims 34-35, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the different size of the diaphragms (i.e., first diaphragm is small and second diaphragm is large), since such a modification would have involved a mere change in the size of the component. A

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change in the size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 36, see housing (2) in figure 1 of Schenkl et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (571) 272-2426. The examiner can normally be reached on Monday through Friday, 8:00AM TO 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on (571) 272-2287. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hoa Q. Pham/

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Primary Examiner, Art Unit 2886

HP

March 1, 2009